

ORDINANCE 47

AN ORDINANCE ENACTING REGULATIONS PRESCRIBING PROCEDURES, TERMS AND CONDITIONS UNDER WHICH LEASES OF TRIBAL LAND MAY BE GRANTED

SECTION 1. EFFECTIVE DATE

These regulations shall become effective upon approval thereof by the Secretary of the Interior or his duly authorized representative.

SECTION 2. SCOPE

These regulations shall govern and control the leasing of all Tribal lands on the Tulalip Indian Reservation, either in trust, restricted or fee status, and whether granted hereunder or heretofore pursuant to any prior Tulalip Ordinance No. 47, as amended, initially approved by the Secretary on March 26, 1981 and thereafter pursuant to the Tribal Constitution Article VI, Section 2, for the purpose of public or private religious, educational, residential, recreational, commercial, industrial and business uses for a period of duration in excess of fifteen (15) years but not exceeding thirty (30) years with no option to renew by the Tulalip Tribes, an Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934 as amended, 25 USC 476; its corporations chartered under Section 17 thereof, 25 USC 477; or any subordinate organization chartered and duly empowered pursuant to Article VI, Section 1(m) of the Tribal Constitution and By Laws; or any Tulalip governmental corporation chartered under Tulalip Ordinance 82, as approved by the Secretary.

SECTION 3. MANDATORY PROVISIONS

All leases under and pursuant to these regulations shall contain the following provisions:

3.1 Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to abrogate the lease. In the event of such termination, all powers, duties, or other functions of the Secretary of the Interior or is authorized representative shall terminate, and the responsibilities for enforcing compliance with the covenants of this lease including those of the Secretary shall be assumed by the lessor or successors in interest. The owners of the land and the lease and his sureties shall be notified of any such charge in the status of the land.

3.2 The lease agrees that he will not use or cause to be used any part of the lease premises for any unlawful conduct or purpose.

3.3 Leases granted hereunder shall contain provisions that payment of rentals are to be made direct to the lessor.

SECTION 4. RENTAL REQUIREMENTS

No lease shall be granted at less than the present fair annual rental as determined by M. A. I. appraisal, or, in the alternative, at a present fair annual rental as the Board of Directors deems appropriate under all the circumstances then present in regard to said lease; PROVIDED, HOWEVER, any lease made and executed under these regulations to an adult member of the Tulalip Tribes of Washington for homesite purposes on residential tribal lands, or to a Tulalip Tribally chartered housing authority for Indian homesites, may be granted for a nominal rental.

SECTION 5. BONDS AND INSURANCE

Each lease granted for business or commercial uses shall have the performance of lessee's contractual provisions, including rentals, secured by insurance, bond, security or other assurances satisfactory to the Board of Directors as well as required the lessee to provide insurance or other undertaking in an amount and manner deemed adequate to protect all insurable improvements on the leased premises and to hold harmless and indemnify the lessor from any liability arising from lessee's use and occupancy of the leased premises; provided, that the requirements of this section may be modified or waived in leases for residential purposes.

SECTION 6. SPECIAL LIMITATIONS AND EXCEPTIONS

6.1 No lease shall provide the lessee with any option to renew which would result in the lessee obtaining a leasehold interest by the exercise of successive options for a term in the aggregate of more than thirty (30) years.

6.2 All leases made and executed pursuant to these regulations shall be for public, religious, educational, recreational, residential or business purposes and uses, including the development or utilization of natural resources in connection with operations under such leases if the lease is for business purposes; and for no other uses and purposes whatsoever.

6.3 No lease shall be made and executed pursuant to these regulations for grazing farming purposes.

SECTION 7. RENTAL ADJUSTMENT

7.1 Any lease granted hereunder shall in the sole discretion of the Board of Directors, provided for: (1) a periodic rental adjustment for the purpose of allowing lessor to benefit from increasing in the value of the leased premises; (2) a periodic rental adjustment for the purpose of maintaining the relative purchasing power of the rent contracted to be paid by the lessee to the lessor; (3) a rental based primarily on percentages of income produced from the leased premises; (4) a rental based primarily on percentages of income produced from or by subleases; (5) a basic rental based upon a fair market rental return for the value of the land and improvements, if any, rented; (6) any combination of (5), above, and (1) through (4), inclusive.

7.2 In the event of a periodic rental adjustment pursuant to paragraph 7.1 (1), above, such shall be made only after a determination of a present fair market rental at the time of the adjustment through appraisal conducted by not less than three (3) M. A. I. appraisers who shall be instructed in the consideration of such fair market rental to exclude improvements or developments accomplished by a lessee during the prior term of the lease or the contribute value of such improvements and, further, shall not be based upon a highest and best use different from that to which the leased premises are committed by the lease. In the event of a rental adjustment for the purposes of paragraph 7.1 (2) such shall be made by reference and comparison to the cost of living index prepared by the United States Department of Labor for the Seattle Metropolitan area for rentals with said cost of living adjustments to be at intervals of not more than five (5) years.

SECTION 8. ASSIGNMENTS, SUBLEASES, ENCUMBRANCES AND AMENDMENTS

Leases may contain provisions authorizing the lessee or such one's successors in interest to sublease the premises, in whole or in part, assign the same, or encumber the leasehold interest for the sole purposes of borrowing capital for development, improvement or purchase and sale of the leasehold interest including improvements. Such provisions may be with or without approval

of the lessor but if without such approval, any sublease, assignment or encumbrance shall not serve to relieve any sublessor, assignor or purchaser upon foreclosure for any liability or obligation to perform the terms, conditions and covenants of the original lessee under the lease, including that for payment of rent unless the lease expressly so provides. In the event of any sublease, assignment or encumbrance by lessee or such one's successor in interest of the leasehold interest, the lessor may require notification thereof together with a copy of the sublease, assignment or encumbrance. All leases containing suretyship provisions shall provide that any surety under any bond shall first consent in writing to any sublease, assignment, encumbrance or amendment of the lease before any of such shall be valid and binding upon the lessor. Notwithstanding the provisions of this Ordinance, any lease granted hereunder authorizing the encumbrance of leasehold interest may contain such provisions necessary to conform with the eligibility requirements for leasehold secured lending as may now or hereafter promulgated by FNMA, FHLMC, FHA/HUD and/or VA in the discretion of the Board of Directors.

SECTION 9. OWNERSHIP OF IMPROVEMENTS

Improvements placed upon the leased premises shall become the property of the lessor upon the expiration of the lease unless specifically excepted therefrom under the provisions of the lease. In the event of such an exception, the lease shall specify the maximum time allowed for removal of any improvements so excepted and required restoration of the premises by the lessee.

SECTION 10. LEASE FEES

The following fees shall be charged by lessor to defray costs of lease administration and shall be collected from lessee:

- a. Original lease set-up fee \$100.00
- b. Upon assignment or sublease \$50.00
- c. Upon encumbrance, amendment, extension, assignment, sublease, modification or other document issued in connection with the lease \$25.00

The foregoing fees may be increased or decreased in such amounts as are deemed by the Board of Directors appropriated to defray costs of administration of the lease.

SECTION 11. VIOLATION OF LEASE PROVISIONS - VENUE

11.1 If, in the opinion of the lessor, any term, condition or covenant of the lease has been breached by failure to perform, the lessee shall be notified by registered or certified mail of such claimed breach and given thirty (30) days after receipt of such notice in which to perform and cure the same. A copy of such notice shall be similarly mailed to any surety on the bond. Failure to remedy the claimed breach shall be cause to the lease terminated and canceled and lessor may thereafter proceed to avail itself of such remedies as are provided by law or by the provisions of the lease. The lessee in all leases shall consent to venue of any legal action brought by the lessor by reason of any breach of the lease being laid at lessor's option in the Superior Court of the State of Washington for the County of Snohomish, or, where appropriate, in the Tribal Court of the Tulalip Tribes of Washington.

11.2 Nothing herein contained shall be construed to deprive the Tulalip Tribes of Washington of the right, at its option, to request the United States to enforce any lease entered into under and pursuant to these regulations or to bring any action for breach of any such lease by a lessee in the federal courts, nor shall these regulations be construed

as an expression of intention of the Congress of the United States and of the Tulalip Tribes of Washington to abrogate the trust responsibility of the United States over lands to be leased hereunder held by it in trust for the Tulalip Tribes of Washington, nor shall the adoption and implementation of these regulations be deemed to exclude the right of the Tulalip Tribes of Washington, should it deem fit to lease tribal lands pursuant to 25 CFR 131, as now enacted on hereafter amended.

SECTION 12. COMPATIBILITY TO COMPREHENSIVE PLAN

No lease shall be granted unless the use to which the leased premises will be elevated and improvements constructed are in conformance and compliance with the Comprehensive Land Use Plan of the Lessor, its zoning and subdivision ordinance and its building codes. In the event there exists no valid tribal ordinance regulating the aforesaid subject matters, the appropriate ordinance and codes of the County of Snohomish shall be by the terms of the lease made applicable.

SECTION 13. ENVIRONMENTAL IMPACTS

No lease shall be made or executed pursuant hereto until the Board of Directors of the Tulalip Tribes of Washington shall have considered the environmental aspects thereof and reviewed said lease's potential environmental impacts as well as reviewed and considered the relationship of a lease's uses to neighboring lands; the height, quality and safety of any structure or other facilities to be constructed on the leases lands; the availability of a judicial forum for all civil and criminal causes arising on the leases lands. Such review shall be conducted by the planning staff of the Tulalip Tribes of Washington and comment thereupon provided the Board of Directors in writing prior to their execution and signing of any lease made hereunder.

SECTION 14. EFFECT

These regulations shall be in full force and effect upon approval of the Secretary of the Interior or his duly authorized representative, anything to the contrary notwithstanding in regulations of the Secretary of the Interior concerning leasing and permitting contained in 25 CFR 131 as now enacted or hereafter amended.

Legislative History

Adopted by Laws of March 7, 1981, Approved March 26, 1981, by Secretary, U.S. Dept. of the Interior

Amended by Reso. #86-284, Laws of May 10, 1986, Approved _____, by Secretary, U.S. Dept. of the Interior

Amended by Reso. #88-0016, Laws of January 2, 1988, Approved _____, by Secretary, U.S. Dept. of the Interior

Amended by Reso. #97-238, Laws of November 1, 1997, Approved December 3, 1997, by Secretary, U.S. Dept. of the Interior

Amended by Reso. #2003-85, Laws of March 8, 2003, Approved _____ by the Secretary, U.S. Dept. of the Interior

Amended by Reso. #04-006, Laws of January 9, 2004, Approved January 22, 2004 by the Secretary, U.S. Dept. of the Interior

Related Laws

Ordinance #44, Adopted by Laws of October 13, 1979 (Land Leases)

Ordinance #46, Laws of April 5, 1980 (Revising and Repealing Certain Ordinances)

Ordinance #46, Laws of May 10, 1980 (Revising and Repealing Certain Ordinances)

Ordinance #47, Laws of March 7, 1981 (30 Year Residential Leasing)

Ordinance #75, Laws of August 3, 1991 (75 Year Leasing)